

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

<p>L. (a) PLAINTIFFS Thomas Wortley 348 Walton Avenue, Apt 1 Perth Amboy, NJ 08861</p> <p>(b) County of Residence of First Listed Plaintiff <u>Middlesex</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Graham F. Baird, Law Office of Eric A. Shore 2 Penn Center, 1500 JFK Blvd, Suite 1240, Philadelphia, PA 19102 Tel: 267-546-0131</p>		<p>DEFENDANTS United States Gypsum Company 300 Markley Street Port Reading, NJ 07064</p> <p>County of Residence of First Listed Defendant <u>Middlesex</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (<i>If Known</i>)</p>																								
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<p>Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity)</i>: 29 U.S.C.A. § 203(d).</p>																										
<p>VI. CAUSE OF ACTION Brief description of cause: Failure to Pay Overtime Compensation</p>																										
<p>VII. REQUESTED IN COMPLAINT: <input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.</p>		DEMAND \$ <i>>150,000</i>	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																							
<p>VIII. RELATED CASE(S) IF ANY (See instructions):</p>																										
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THOMAS WORTLEY, individually and on behalf of those similarly situated,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY,

Defendant

JURY DEMANDED

Civil Action No. .

COLLECTIVE AND CLASS ACTION CIVIL COMPLAINT

Named Plaintiff Thomas Wortley (hereinafter referred to as “Named Plaintiff”), individually and on behalf of all those similarly situated, by and through his undersigned counsel, hereby complains as follows against Defendant United States Gypsum Company (hereinafter referred to as “Defendant”).

INTRODUCTION

1. Named Plaintiff has initiated the instant action to redress Defendant’s violations of the Fair Labor Standards Act 29 U.S.C. § 201, *et seq.*, (“FLSA”) and the New Jersey Wage Payment Law, N.J.S.A. 34:11-56a, *et seq.*, (hereinafter said New Jersey laws are collectively referred to as the “New Jersey Wage Laws”).

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims herein arise under laws of the United States, the FLSA. This

Court has supplemental jurisdiction over related state law claims because they arise out of the same circumstances and are based upon a common nucleus of operative fact.

3. Venue is properly laid in this judicial district pursuant to 28 U.S.C. §§ 1331(b)(1) and (b)(2), because Defendant resides in and or conducts business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

PARTIES

4. Named Plaintiff, Thomas Wortley, is an adult individual residing in Perth Amboy, New Jersey.

5. Defendant, United States Gypsum Company, located at 300 Markley Street, Port Reading, Middlesex County, New Jersey. Defendant is an international company, with its United States corporate headquarters located at 550 West Adams St, Chicago, Illinois.

6. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all time relevant herein in the course and scope of their employment with and for Defendant.

FLSA COLLECTIVE ACTION ALLEGATIONS

7. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

8. In addition to bringing this action individually, Named Plaintiff brings this action for violations of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all employees and other similar non-exempt employees presently and formerly employed by Defendant at any point in the three years preceding the date the

instant action was initiated (the members of this putative class are referred to as “class members”).

9. Named Plaintiff and Class members work and/or worked for Defendant within the last three years.

10. Named Plaintiff and Class members are similarly situated, have similar job duties, have similar pay provisions, and are all subject to Defendant’s unlawful policies and practices as discussed *infra*.

11. There are numerous similarly situated current and former employees of Defendant who Defendant failed to pay overtime and who would benefit from the issuance of a Court Supervised Notice of the instant lawsuit and the opportunity to join the present lawsuit.

12. Similarly situated employees are known to Defendant, are readily identifiable by Defendant, and can be located through Defendant’s records.

13. Therefore, Named Plaintiff should be permitted to bring this action as a collective action for and on behalf of himself and those employees similarly situated, pursuant to the “opt-in” provisions of the FLSA, 29 U.S.C. § 216(b).

CLASS ACTION ALLEGATIONS

14. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

15. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Named Plaintiff brings his claims for relief to redress Defendant’s violations of the New Jersey Wages Laws on behalf of himself and those similarly situated.

16. Specifically, Named Plaintiff seeks to bring this action on behalf of all employees presently and formerly employed by Defendant in New Jersey subject to Defendant's unlawful pay practices and who worked for Defendant at any point the three years preceding the date the instant action was initiated (the members of this putative class are also referred to as "class members").

17. Named Plaintiff and class members are similarly situated, have similar job duties, have similar pay provisions, and are all subject to Defendant's unlawful policies and practices as described herein.

18. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiff does not know the exact size of the class, as such information is in the exclusive control of Defendant.

19. Named Plaintiff's claims are typical of the claims of class members because Named Plaintiff, like all Class Plaintiffs, was employed by Defendant within the last three years in New Jersey whom Defendant required to work more than forty hours per workweek and then failed to pay proper overtime wages as required by New Jersey Wage Laws.

20. Similarly situated employees are known to Defendant, are readily identifiable by Defendant, and can be located through Defendant's records.

21. Therefore, Named Plaintiff should be permitted to bring this action as a class action for and on behalf of himself and those employees similarly situated.

FACTUAL BACKGROUND

22. The foregoing paragraphs are incorporated herein as if set forth in full.

23. On May 17, 2010, Defendant hired Named Plaintiff to work as a production operator.

24. At the time of his termination, Defendant paid Named Plaintiff a rate of \$26.28 per hour.

25. Named Plaintiff regularly worked full work weeks, which consisted of forty (40) hours per week.

26. Named Plaintiff also worked additional hours, which resulted in him regularly working in excess of forty (40) hours each work week.

27. The additional hours worked by Named Plaintiff were mandated by Defendant.

28. However, due to Defendant's policies and practices, as detailed herein, Defendant paid Named Plaintiff \$26.28 per hour for only forty (40) hours per week, failing to pay Named Plaintiff for hours spent working in excess of forty (40) hours per week and failing to pay Named Plaintiff overtime wages for all hours worked in excess of forty hours in a workweek.

29. Class members regularly worked/work full workweeks, which consisted/consist of forty hours per week.

30. Class members also worked/work additional hours in excess of forty hours per week.

31. However, due to Defendant's policies and practices, as detailed herein, Defendant failed/fails to pay class members for hours spent working in excess of forty hours per week, which resulted/results in Defendant failing to pay class members overtime wages for all hours worked in excess of 40 hours in a workweek.

Overtime Violations

32. The foregoing paragraphs are incorporated herein as if set forth in full.

33. Named Plaintiff regularly worked at least forty (40) hours each workweek.
34. Defendant required Named Plaintiff to work in excess of forty (40) hours each workweek.
35. Defendant paid Named Plaintiff for only forty (40) hours per week regardless of the number of hours Named Plaintiff worked.
36. Defendant redistributes Named Plaintiff's hours to the following week in order to avoid paying Named Plaintiff overtime.
37. Defendant would require Named Plaintiff to clock-out but require Named Plaintiff to continue to work in order to avoid paying Named Plaintiff overtime.
38. As described above, Defendant evaded paying Named Plaintiff for all hours worked in excess of forty (40) hours per work week.
39. Defendant required/requires class members to work in excess of forty (40) hours each workweek.
40. Defendant paid/pays class members for only forty (40) hours per week regardless of the number of hours Named Plaintiff worked.
41. Defendant redistributed/redistributes class members' hours to the following week in order to avoid paying class members' overtime.
42. Defendant required/requires class members to clock out but required/requires class members to continue to work in order to avoid paying class members overtime.
43. As described above, Defendant evaded/evades paying class members for all hours worked in excess of forty (40) hours per workweek.
44. The aforementioned conduct has caused damages to Named Plaintiff and class members.

COUNT I
Violation of the Fair Labor Standards Act
(Failure to Pay Overtime Compensation)

45. The foregoing paragraphs are incorporated herein as if set forth in full.
46. At all times relevant herein, Defendant has and continues to be an employer within the meaning of the FLSA. *See* 29 U.S.C.A. § 203(d).
47. At all times relevant herein, Defendant was/is responsible for paying wages to Named Plaintiff and class members.
48. At all times relevant herein, Named Plaintiff and class members were/are employed with Defendant as “employees” within the meaning of the FLSA.
49. Under the FLSA, an employer must pay an employee at least one and a half times her base rate for each hour worked in excess of forty (40) hours per work week.
50. Defendant failed/fails to pay for hours worked by Named Plaintiffs and class members in excess of forty (40) hours per work week.
51. Defendant’s conduct was and is willful and not based upon any reasonable interpretation of the law.
52. As a result of Defendant’s unlawful conduct, Plaintiff have suffered damages as set forth herein.

COUNT II
Violation of New Jersey Wage and Hour Laws
(N.J.S.A. 34:11 -56a, *et seq.*)

53. The foregoing paragraphs are incorporated herein as if set forth in full

54. At all times relevant herein, Defendant has and continues to be an employer

within the meaning of the New Jersey Wage and Hour Laws. *See* N.J.S.A. 34:11-56a1(g).

55. At all times relevant herein, Defendant was/is responsible for paying wages to
Named Plaintiff and class members.

56. At all times relevant herein, Named Plaintiffs and class members were/are
employed with Defendant as employees within the meaning of the New Jersey Wage and Hour
Law.

57. Under the New Jersey Wage and Hour Law, an employer must pay a non-exempt
employee at least one and one half times her base rate for each hour worked in excess of forty
(40) hours per work week.

58. At all relevant times herein, Named Plaintiff and class members were/are not
“exempt” employees for purposes of the overtime provisions of the New Jersey Wage and Hour
Law.

59. Defendant’s violations of the New Jersey Wage and Hour Law include failing to
pay Named Plaintiff and class members for hours worked by him in excess of forty (40) hours
per work week.

60. Defendant's conduct in failing to pay Named Plaintiff and class members properly was and is willful and was not based upon any reasonable interpretation of the law.

61. As a result of Defendant's unlawful conduct, Named Plaintiff and class members have suffered damages as set forth herein.

VII. RELIEF REQUESTED

WHEREFORE, Named Plaintiff and class members demand judgment in their favor and against Defendant and that this Court enter an Order providing that:

A. Defendant is prohibited from continuing to maintain its illegal policy, practice or custom in violation of federal and state wage and hours laws and;

B. Defendant is to compensate, reimburse, and make Named Plaintiff and class members' whole for any and all pay and benefits they would have received had it not been for Defendants illegal actions, including but not limited to past lost earning. Named Plaintiff and class members should be accorded those benefits illegally withheld;

C. Named Plaintiffs and class members are to be awarded liquidated damages as applicable under the Fair Labor Standards Act and New Jersey Wage and Hour Law in an amount equal to the actual damages in this case;

D. Named Plaintiff and class members are to be awarded the costs and expenses of this action and reasonable attorneys' fees as provided by applicable federal and state law.

E. Any other further relief this Court deems just proper and equitable.

Date: February 4, 2019

LAW OFFICES OF ERIC A. SHORE, P.C.

BY: _____



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